

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BERIAM ORTIZ,

Index No.: 07 CIV
10365

Plaintiff

v.

**AFFIRMATION IN
SUPPORT**

ERIN KATHLEEN BARLOW, TOYOTA MOTOR CREDIT,
CORP. AND CAROL SHERMAN,

Defendants
-----x

John R. Marquez, an attorney duly admitted to practice law in the United States District Court for the Southern District of New York, affirms the following under the penalties of perjury:

1. I am a member of the firm of EUSTACE & MARQUEZ, attorneys for the Defendant, Carol Sherman.
2. I am familiar with all of the pleadings and proceedings in this matter and I make this affirmation in support of the within motion for an Order granting Defendant Carol Sherman Summary Judgment and dismissing the Complaint and any and all Cross Claims and for such other relief as the Court may deem just and proper.
3. This is an action for personal injuries sustained to Plaintiff Beriam Ortiz in a motor vehicle accident.
4. This action was commenced against Defendant Carol Sherman by filing of Summons and Complaint on or about October 9, 2007. Issue was joined by service of a Verified Answer by

Defendant Carol Sherman on or about November 12, 2007. (See Exhibit "A and B", Pleadings, attached to Plaintiff's Notice of Motion, dated April 18, 2008).

5. Affirmant refers the Court to the documents attached to Plaintiff's Notice of Motion: the Notice of Removal (Exhibit "C"), and Police Accident Report (Exhibit "F").

6. Attached hereto is the Affidavit of Carol Sherman attesting to her knowledge of the motor vehicle accident that is the basis of this lawsuit. (See, Affidavit Exhibit "A").

7. Ms. Sherman's car was struck in the rear while traveling with slow moving traffic on the Bruckner Expressway, Bronx, N.Y.

8. As attested by Plaintiff Beriam Ortiz, after Ms. Ortiz's vehicle was struck in the rear by Defendant Erin Barlow's vehicle, Ms. Ortiz's vehicle struck Carol Sherman's vehicle in the rear. (See, Ortiz Affidavit attached to Plaintiff's Motion as Exhibit "E").

9. Defendant Sherman did not cause the accident between the Ortiz and Barlow vehicles, and therefore should not be a party to this action.

10. Based upon the above recitations, the Affidavit of Ms. Sherman, The Affidavit of Beriam Ortiz, as well as the annexed Memorandum of Law and accompanying exhibits, it is respectfully requested that the Court issue an Order, pursuant to FRCP 56,

granting Defendant Carol Sherman summary judgment and dismissing Plaintiff's Complaint, and for such other and further relief as this Court deems just and proper.

WHEREFORE, it is respectfully requested that the Court issue an Order granting the within motion for Summary Judgment and dismissing the Plaintiff's Complaint, and for such other and further relief as this Court deems just and proper.

DATED: May 19, 2008
White Plains, New York



John R. Marquez-3623

EXHIBIT "A"

5. When my vehicle was struck in the rear I was not stopped, but moving forward in slow moving traffic.

6. At the time I heard the initial sound made by car(s) crashing somewhere behind me, I was not stopped, but moving forward in slow moving traffic.

7. After my vehicle was struck I exited my car and observed the vehicle that struck mine. The driver was a barefooted woman.

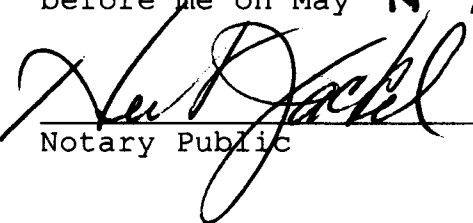
8. I also observed the driver of the vehicle that struck the vehicle behind mine.

9. The driver of that vehicle stated she was looking at her atlas and did not see the vehicle in front of her.

10. I understand from my attorneys, Eustace & Marquez that this Affidavit will be used in a motion seeking dismissal of this lawsuit against me and I support such a motion.


Carol Sherman

Sworn and subscribed
before me on May 14, 2008


Notary Public

